

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case No.: 12-46965 -GFK

Steven F. Meldahl,

Chapter 11

Debtor.

NOTICE OF HEARING AND MOTION OBJECTING TO EXEMPT PROPERTY

1. TCF National Bank (“TCF”), a creditor holding an unsecured claim of the debtor Steven F. Meldahl (“Debtor”), moves this Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 1:30 p.m. on February 26, 2013, before the Honorable Gregory F. Kishel in Courtroom 2-A, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and served not later than February 21, 2013, which is five days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, and Bankruptcy Rule 5005. This proceeding is a core proceeding. This case was filed as a voluntary case under Chapter 11 of the United States Bankruptcy Code and is now pending in this Court.

5. This motion arises under 11 U.S.C. § 522, and Bankruptcy Rule 4003 and Local Rule 4003-1(a). This motion is filed under Bankruptcy Rule 9014 and Local Rule 9013-1. Movant requests relief with respect to Debtor Steven F. Meldahl's (the "Debtor") claims for certain exemptions.

6. The Debtor has claimed as exempt, under 11 U.S.C. § 522(d)(1), the following asset to which the TCF objects:

- a. Homestead, with a petition value of \$900,300.00.

TCF objects to the Debtor's claim of exemption under 11 U.S.C. § 522(d)(1) as TCF has not yet been able to receive and review documentation to verify the value of the homestead and what may be actually exempt. In addition, on information and belief, TCF believes that the Debtor has intentionally reduced the actual value of the asset in an attempt to artificially reduce the actual equity in the property.

7. The Debtor has claimed as exempt, under 11 U.S.C. § 522(d)(3), the following assets to which TCF objects:

- a. Household Goods and Furnishings, with a petition value of \$2,000.00; and
- b. Wearing Apparel with a petition value of \$600.00; and

TCF objects to the Debtor's claims of exemption under 11 U.S.C. § 522(d)(3) as TCF has not yet been able to receive and review documentation to verify the value of these assets and the claimed exemption. TCF further objects on grounds that there is no indication of what assets Debtor actually owns, and therefore, no way to calculate whether the exemption claim is appropriate.

8. The Debtor has claimed as exempt, under 11 U.S.C. § 522(d)(2) and 11 U.S.C. § 522(d)(5), the following asset to which exemption TCF objects:

- a. 2007 Cadillac Escalade V8-AWD EXT 4D, with a petition value of \$22,425.00

TCF objects to the Debtor's claim of exemption under 11 U.S.C. § 522(d)(2) and 11 U.S.C. § 522(d)(5), as TCF has not yet been able to receive and review documentation

to verify the value of this asset to allow it to be exempt, or to further verify whether the asset is encumbered by a valid lien.

TCF further objects to the Debtor's claim of exemption to the extent the claimed exemption exceeds the amount available to the Debtor under 11 U.S.C. §522(d)(5). The Debtor's claimed exemption in the above referenced asset should be limited to the amount remaining available to him under 11 U.S.C. §522(d)(5).

WHEREFORE, TCF respectfully moves the Court for an order sustaining TCF's objections to Debtor's claimed exempt property or in the alternative for an order directing that the Debtor provide sufficient documentation and records to support his claimed exemptions, and such other relief as may be just and equitable.

FOLEY & MANSFIELD, PLLP

Dated: February 8, 2013.

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:	Case No.: 12-46965 -GFK
Steven F. Meldahl, Debtor.	Chapter 11

**MEMORANDUM OF LAW IN SUPPORT OF TCF'S MOTION
OBJECTING TO EXEMPT PROPERTY**

TCF National Bank ("TCF"), through its undersigned counsel, respectfully submits this Memorandum of Law in support of its Motion Objecting to the Debtor Steven F. Meldahl's ("Debtor") Exempt Property.

STATEMENT OF FACTS

TCF relies on the statement of facts contained in the verified Motion and the facts scheduled by the Debtor and incorporates the same herein.

ARGUMENT

I. LEGAL STANDARD

When a debtor files a bankruptcy petition, all of his property becomes property of the bankruptcy estate." *Taylor v. Freeland & Kronz*, 503 U.S. 638, 642, 112 S.Ct. 1644, 118 L.Ed.2d 280 (1992) (citing 11 U.S.C. § 541). However, the Bankruptcy Code "allows a debtor to prevent the distribution of certain property by claiming it as exempt." *Id.* A bankruptcy debtor may choose between the federal exemptions provided in 11 U.S.C. § 522(d) and the exemptions provided under state law. *In re Huebner*, 986 F.2d 1222, 1224

(8th Cir.1993). Section 522(d) of the Bankruptcy Code specifies the federal exemptions available to debtors. *Matter of Smith*, 640 F.2d 888, 891 (7th Cir. 1981).

Rule 4003(b) of the Federal Rules of Bankruptcy Procedure establishes a 30-day deadline from the initial meeting of creditors for objecting to what the Debtor has claimed as exempt. Fed. R. Bankr. P. 4003(b). Once an objection is filed, the objecting party has the burden of proof that the exemptions are not properly claimed. Fed. R. Bankr. P. 4003(c). After hearing on notice, the bankruptcy court shall determine the issues presented by the objection. *Id.*

Here, the meeting of creditors was held on January 11, 2013. Accordingly, TCF's objections are timely.

II. TCF OBJECTS TO DEBTOR'S VALUATION OF HIS HOMESTEAD EXEMPTION

TCF objects to Debtor's homestead exemption on the basis that Debtor has substantially undervalued the asset in his bankruptcy schedules.

The denial of an exemption is required when extrinsic evidence that a debtor acted with the intent to defraud creditors exists. *In re Curry*, 160 B.R. 813, 817 (Bankr. D. Minn. 1993)(citing *Norwest Bank Nebraska, N.A. v. Tvetan*, 848 F.2d 871 (8th Cir.1988); *In re Armstrong*, 931 F.2d 1233 (8th Cir. 1991)).

According to the Eighth Circuit, extrinsic evidence of fraud can be composed of:

- (1) conduct intentionally designed to materially mislead or deceive creditors about the debtor's position;
- (2) conveyances for less than fair value;
- (3) the continued retention of conveyed property; borrowing to effect the conversion; or

(4) concealment of assets from creditors.

Norwest Bank Nebraska, N.A. v. Tveten, 848 F.2d 871 (8th Cir. 1988); *Hanson v. First Nat. Bank in Brookings*, 848 F.2d 866, 868 (8th Cir. 1988); *In re Johnson*, 880 F.2d 78, 82 (8th Cir. 1989).

Because a debtor will rarely, if ever, admit to an intent to deceive, circumstantial evidence of such intent may be considered. *In re Main*, 133 B.R. 746 (W.D. Pa. 1991). A reputable presumption of intent to deceive arises upon the making or publishing of a false statement. *Id.* at 752 (citing *In re Jones*, 88 B.R. 899, 903 (Bankr. E.D. Wisc. 1988)).

“Exemptions will not be allowed where property or its substantial value has initially been intentionally concealed from the bankruptcy court and a debtor's estate.” *In re Bauer*, 291 B.R. 127, 130 (Bankr. D. Minn. 2003) *aff'd*, 298 B.R. 353 (Bankr. App. 8th Cir. 2003); *In re Miller*, 255 B.R. 221, 224 (Bankr. D. Neb. 2000). “Intentional concealment can be inferred from circumstances of the matter, including a non-disclosure that is the result of a reckless disregard by a debtor for the truth of the information furnished.” *In re Bauer*, at 130; *In re Unruh*, 278 B.R. 796, 803 (Bankr. D. Minn. 2002). Accordingly, bankruptcy courts in this district have sustained objections to a Debtor’s homestead exemption when a Debtor has intentionally concealed substantial value of the homestead in his bankruptcy schedules. *See In re Bauer*, 291 B.R. 127, 129 (Bankr. D. Minn. 2003), *aff'd*, 298 B.R. 353 (Bankr. App. 8th Cir. 2003) (denying a debtor’s homestead exemption in its entirety after finding that the debtor had intentionally undervalued the asset in bad faith, and therefore, lost his right to exempt the property.).

Here, the multitude of the actions taken by the Debtor, including the undervaluation of the homestead supports a claim that the Debtor's is intending to deceive and mislead creditors as to the true worth and value of the asset. In Schedule C—Property Claimed as Exempt of Debtor's bankruptcy schedules, Debtor claims that the current property value of his homestead is \$900,300.00. (Docket No. 7, p. 21). On Schedule A of Debtor's amended bankruptcy schedules, Debtor further identifies a secured claim on his homestead in the amount of \$1,027, 215.00. (Docket No. 15, p. 1). On TCF's information and belief, Debtor's homestead has recently been appraised at approximately \$1.2 million, thus worth substantially more than what Debtor valued in his schedules. In light of Debtor's decision to undervalue his homestead by approximately \$300,000.00, Debtor is misleading creditors by minimizing the value of the asset, which has the practical effect of artificially decreasing any remaining equity in the homestead that is available to creditors.

Accordingly, TCF respectfully requests that the Court deny Debtor's claimed homestead exemption in its entirety.

III. TCF OBJECTS TO DEBTOR'S HOUSEHOLD GOODS AND WEARING APPAREL EXEMPTIONS

TCF objects to Debtor's household goods and wearing apparel objections on the basis that Debtor has undervalued the same.

The federal exemption for both household furnishings and wearing apparel is enumerated in 11 U.S.C. §522(d)(3). Section 522(d)(3) provides:

The debtor's interest, not to exceed \$550 in value in any particular item or \$11,525 in aggregate value, in household furnishings, household goods,

wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

11 U.S.C. §522(d)(3).

Here, Debtor has claimed an exemption of household good and furnishings in the amount of \$1,000.00, and an exemption claim for wearing apparel in the amount of \$600.00. (Docket No. 7, pp. 22). With respect to Debtor's household goods, TCF objects on two grounds. The Debtor maintains both his homestead property and a vacation home in Florida. First, TCF believes that Debtor's valuation of household goods in the amount of \$1,000.00 is a bit suspect in light of the value of Debtor's homestead. Even if this Court were to assume Debtor's \$900,300.00 valuation of his homestead is accurate, Debtor may still have more than \$1,000.00 worth of household goods to furnish it and his Florida vacation home. As a result, TCF requests the Debtor to provide documentation that verifies the value of Debtor's household goods. In the alternative, TCF would request the Court make a determination after an evidentiary hearing on this issue pursuant to Rule 9014 of the Federal Rules of Bankruptcy Procedure, which will allow the parties in interest to ensure that the Debtor has provided an accurate accounting of his household goods, and to confirm that no household goods have been sold or transferred by Debtor during the pendency of, or immediately prior to this bankruptcy proceeding.

Second, even if Debtor's claimed exemption of household goods valued at \$1,000 is accurate, TCF further objects to the Debtor's claim of exemption because Debtor has failed to specify and quantify the household goods he owns, which makes it impossible to calculate their true value. (*See* Docket No. 7, p. 22). The same is true for Debtor's claim

of exemption with respect to his wearing apparel valued at \$600.00, and as such, TCF objects accordingly. (*Id.*). In particular, Debtor has failed to identify or quantify each particular household item and wearing apparel item he is claiming as exempt. Therefore, the Debtor has provided nothing more than the unsupported statements of value based solely on his own opinion. Without more, there is no way to determine whether the Debtor has complied with exemption limits of section 522(d)(3) of the Bankruptcy Code, which prohibits the exemption of “any particular item” that exceeds \$550.00 in value. *See* 11 U.S.C. §522(d)(3). Without knowing whether Debtor has any item(s) that exceed this \$550.00 threshold, it is impossible to determine whether the Debtor should have made an additional claim under the wildcard exemption of section 522(d)(5) of the Bankruptcy Code to cover any amount that exceeds this limit. Until Debtor provides a specific accounting of the household goods and items of wearing apparel he is claiming as exempt, it is impossible to determine whether the wildcard exemption should have been used to cover such items, and to what extent.

Additionally, Debtor’s failure to identify the specific household goods and items of wearing apparel he wishes to claim as exempt further conflicts with the very purpose of the Bankruptcy process. As numerous bankruptcy courts have noted:

[A]ccuracy, honesty, and full disclosure are critical to the functioning of bankruptcy and inherent in the bargain for a debtor's discharge. Therefore, debtors are responsible for disclosing an accurate and complete schedule of assets with proper values and a truthful statement of affairs in order to convey a complete and accurate portrayal of their financial situation.

In re JK Harris & Co., LLC, 475 B.R. 470, 477 (Bankr. D. S.C. 2012) (citing *Kestell v. Kestell*, 99 F.3d 146, 149 (4th Cir. 1996)). In addition, a debtor is obligated to

fully disclose all assets which will prevent the waste of judicial and economic resources. *See In re Mascolo*, 505 F.2d 274, 278 (1st Cir. 1974) (holding that, “the petition, including schedules and statements, must be accurate and reliable, without the necessity of digging out and conducting independent examinations to get the facts.”); *Mertz v. Rott*, 955 F.2d 596, 598 (8th Cir. 1992); *In re Abramov*, 329 B.R. 125, 134–135 (Bankr. E.D. N.Y. 2005) (noting the determination of relevance and importance of property for an estate is not the debtor's decision to make and that instead, “it is the debtor's role to simply consider the question carefully and answer it completely and accurately.”).

By offering vague and generalized descriptions for the household goods and items of wearing apparel that he is claiming as exempt, Debtor has frustrated that purpose. As stated above, Debtor’s failure to completely disclose the particular items of household goods and wearing apparel he is claiming as exempt serves as grounds for holding an evidentiary hearing to ensure Debtor’s claimed exemptions are proper under the Bankruptcy Code.

IV. TCF OBJECTS TO DEBTOR’S AUTOMOBILE EXEMPTION

TCF objects to Debtor’s undervalue of the automobile, as Debtor only claimed \$4,537.25¹ under the wildcard exemption, even though he lists the vehicle as having a current market value of \$22,425.00.

¹ Upon information and belief, Debtor’s claim for \$4,537.25 represents the monetary amount that cannot be covered under the automobile exemption enumerated in section 522(d)(2) of the Bankruptcy Code.

The federal exemption for a motor vehicle is enumerated in 11 U.S.C. §522(d)(2). *In re Steele*, 8 B.R. 94, 95 (Bankr. D.S.D. 1980); *In re Bailey*, 326 B.R. 750, 756 (Bankr. S.D. Iowa 2004). Section 522(d)(2) provides for an exemption of debtor's interest, in one motor vehicle not to exceed \$3,450 in value. 11 U.S.C. § 522 (2012).

Here, Debtor cites to 11 U.S.C. § 522(d)(2) and 11 U.S.C. §522(d)(5) as the basis for claiming the exemption of a 2007 Cadillac Escalade V-8-AWD EXT. (Docket No. 7, p. 22). In particular, Debtor used the full \$3,450.00 allowed under 11 U.S.C. § 522(d)(2), before using the "wild card" exemption of 11 U.S.C. § 522(d)(5) to exempt all of his equity in the Cadillac not exemptible under 11 U.S.C. § 522(d)(2). (*Id.*). In light of these two claimed exemptions, TCF objects on two separate grounds.

First, TCF objects because Debtor has undervalued the automobile². Specifically, in his bankruptcy schedules, Debtor lists the Cadillac as having a current property value of \$22,425.00. (Docket No. 7, p. 22). Yet, Debtor only claimed \$4,537.25 under the "wild card" exemption for this asset. (*Id.*). Assuming that Debtor's assessment of the Cadillac's current property value is accurate, Debtor has grossly undervalued this asset in order to claim it as exempt and TCF's objection should be sustained.

Second, TCF further objects on the grounds that because Debtor has undervalued the value of the Cadillac, Debtor should have claimed more than \$4,537.25 under the wildcard exemption of section 522(d)(5) of the Bankruptcy Code.

² For the sake of brevity, TCF will not reiterate the law governing the undervaluing of exempt property, which has already been discussed in the section regarding Debtor's homestead, *supra*.

It is worth noting that Debtor's assessment of the vehicle's current market value may be in accordance with Kelly Blue Book Values. See Exhibit 1. In fact, as of February 5, 2013, a 2007 Cadillac Escalade V-8-AWD EXT with standard features and mileage of 100,000 miles has a Kelly Blue Book value of \$20,037.00 to \$24,037.00 depending on its condition. In light of the Kelly Blue Book Value, it is clear that the Debtor has no reasonable basis for only valuing the Cadillac in the amount \$4,537.25 under the wildcard exemption.

Accordingly, TCF objects to the Debtor's claim of exemption under 11 U.S.C. § 522(d)(2) and 11 U.S.C. § 522(d)(5), as TCF has not yet been able to receive and review documentation to verify the value of these assets to allow them to be exempt.

CONCLUSION

For the foregoing reasons, TCF respectfully requests this Court to sustain its objections to Debtor's claimed exempt property or in the alternative for an order directing that the Debtor provide sufficient documentation and records to support his claimed exemptions, and such other relief as may be just and equitable.

Dated: February 8, 2013.

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Steven F. Meldahl,

Debtor.

Case No.: 12-46965 -GFK

Chapter 11

VERIFICATION

I, Monica Lash, am a Bankruptcy Specialist for TCF National Bank, and I state under penalty of perjury that the information contained in this Motion is true and correct to the best of my knowledge.

Dated: February 8, 2013.



Monica Lash



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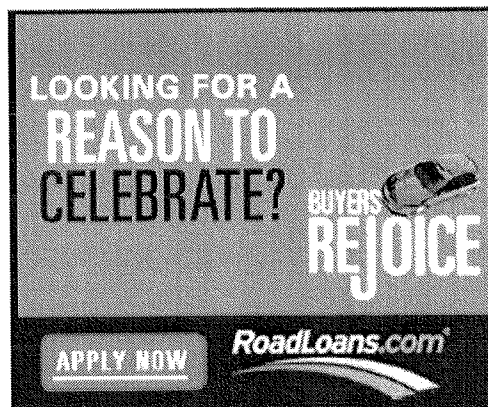
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Unsworn Affidavit of Service

[illegible]

I, Jacquelyn J. LaVaque, declare under penalty of perjury that on February 8, 2013, I mailed copies of the attached **Notice of Hearing and Motion Objecting to Exempt Property; Memorandum of Law in Support of Motion, and proposed Order** by first class mail, postage prepaid, to each entity named below at the address stated below for each entity:

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Phillip & Cantina Taylor
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Preserve Temple Terrace Condo
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Executed on: February 8, 2013

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Steven F. Meldahl

Debtor.

Case No.: 12-46965 -GFK

Chapter 11

ORDER

This case came before the court upon the motion of TCF National Bank ("TCF"), objecting to the Debtor's exemptions. Based upon the files and records of the proceedings herein,

IT IS ORDERED:

1. TCF's objections to the exemption of the following assets are sustained:
 - a. Homestead, with a petition value of \$900,300.00.
 - b. Household Goods and Furnishings, with a petition value of \$2,000.00.
 - c. Wearing Apparel with a petition value of \$600.00.
 - d. 2007 Cadillac Escalade V8-AWD EXT 4D, with a petition value of \$22,425.00.

Dated: _____

Gregory F. Kishel
United States Bankruptcy Judge